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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re FELIPE G., A Person Coming Under the
Juvenile Court Law.

B154938

(Super. Ct. No. JJ09158)

THE PEOPLE,
Plaintiff and Respondent,
v.
FELIPE G.,
Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles R. Scarlett, Judge. (Retired judge of the L.A. Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Lynda J. Vitale, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, and Betty B. Chim, Deputy Attorney General, for Plaintiff and Respondent.

SUMMARY

Appellant Felipe G. challenges his conviction for possession of a firearm by a minor on the ground the juvenile court should have granted his suppression motion. We conclude the court properly denied the suppression motion because substantial evidence shows appellant's mother voluntarily consented to a search of his room.

FACTUAL AND PROCEDURAL BACKGROUND

During a search of appellant's resident, police officers found a .22 caliber handgun in his bedroom.

A Welfare and Institutions Code section 602 petition alleged appellant possessed a firearm in violation of Penal Code section 12101, subdivision (a)(1). The trial court sustained the petition, declared appellant to be a ward of the court, and ordered appellant placed home on probation. The court found the offense was a felony and selected three years as the maximum period of confinement.

DISCUSSION

Appellant's contentions on appeal pertain solely to the denial of his motion to suppress the gun and post-arrest statements.

At the hearing on appellant's suppression motion, Officer Ismael Ververa, Officer Craig Montierth, and Sergeant Richard Wade of the South Gate Police Department testified that at about 5:30 p.m. on May 26, 2001, they and one or more other officers went to the residence appellant shared with his mother and sister. The officers wore jeans, polo shirts bearing the name of their police department, and gun belts. Ververa addressed appellant's mother, Maria R., in Spanish. He requested and received her permission to enter her home. Ververa told Maria R. the officers had received information that appellant might have a gun in the house. He asked her if the officers could search appellant's room. Maria R. consented and asked Ververa about appellant's associates. Ververa gave Maria R. a consent form printed in Spanish. He asked her to read the form and explained to her that signing the form meant she was giving the officers permission to search appellant's room. Maria R. appeared to read the form, and

then signed it. The officers could not locate the original consent form, but produced a copy of the signed, Spanish-language form (People's Exhibit 1).

Maria R. testified she was asleep when the officers arrived. Her daughter let the officers in and awakened Maria R. The officers told Maria R. they found out appellant had a gun and were going to search for it. They asked her for permission to search, but she did not say anything because they caught her off guard and they were going to bring her a "paper so that [she] could give them permission to search [appellant's] room." She understood the officers were seeking permission to search and the purpose of the paper the officers gave her was for her to consent to the search. She waited for them to give her the paper before she agreed to let them search. She signed the paper they gave her and understood that, by signing it, she gave the officers permission to search appellant's room. She acknowledged that the signature on People's Exhibit 1 was hers, but insisted the only document she signed was written exclusively in English. Because it was written in English, she did not read it, and the officers neither explained nor read it to her. She testified she signed the form "so they could search the place where the gun was at."

Maria R. also testified that she signed the form because she was nervous and intimidated by the presence of the officers. She thought "in reality they were going to go look for the weapon," and she had no option except signing the form. She thought the form was a warrant, although she admitted she did not know what a warrant was.

After Maria R. signed the consent form, Montierth and two other officers searched appellant's bedroom and found a handgun underneath his mattress.

The juvenile court found Maria R. knew she was signing a consent to search form, the officers explained it to her, and her claimed failure or inability to read it was inconsequential. The court further found Maria R.'s consent was voluntarily given. Accordingly, the court denied the motion to suppress. Appellant contends his mother did not freely and voluntarily consent to the search, but was instead intimidated by the officers' presence in her home and their assertion of authority to search.

In ruling upon a motion to suppress, the trial court determines the credibility of the witnesses, resolves any conflicts in the testimony, weighs the evidence, and draws appropriate factual inferences. We will uphold the trial court's express and implied findings on such matters if they are supported by substantial evidence, but we independently review the application of the relevant law to the facts. (*People v. Alvarez* (1996) 14 Cal.4th 155, 182.)

Neither a warrant nor probable cause is required for a search conducted according to consent. (*People v. Woods* (1999) 21 Cal.4th 668, 674.) The prosecution bears the burden of establishing that the consent upon which a search is based was voluntarily given, i.e., a product of the individual's free will rather than a mere submission to an express or implied assertion of authority. (*People v. James* (1977) 19 Cal.3d 99, 106.) The voluntariness of consent is a question of fact that is determined in light of the totality of circumstances. (*Ibid.*) Accordingly, all presumptions favor the proper exercise of the trial court's power to determine witness credibility, resolve conflicts, weigh evidence, and draw factual inferences. (*Id.* at p. 107.)

Substantial evidence supports the juvenile court's finding that Maria R. voluntarily consented to the search. The encounter between Maria R. and the officers was consensual in nature from its inception, as shown by Ververa's testimony he requested and received Maria R.'s permission to enter her home. The officers did not barge in, draw their guns, assert their authority to enter or search, or threaten any further action or adverse consequences. They told Maria R. the reason for their presence, and requested and received her verbal consent to search appellant's room. Ververa testified he gave Maria R. a consent form written in Spanish, which she appeared to read, and explained that her signature on the form meant she gave them permission to search appellant's room. Maria R. admitted she signed the form Ververa gave her. She further admitted she understood the officers were seeking permission to search appellant's room and that by signing the paper they gave her, she granted them permission. It is inconsequential whether the form was in Spanish, as shown by the officers' testimony and *People's*

Exhibit 1, or in English, as Maria R. testified. She clearly admitted she knew the purpose of the form and the significance of her signature thereon.

Maria R.'s testimony that she was intimidated, felt she had no option except to sign the form, and believed the officers would search for the gun anyway was negated by her testimony that she initially did not answer when the officers asked her for permission to search, but waited until they gave her the form to sign. She further testified she might have objected to the search if the officers had not given her the "paper so that I could give them permission to search [appellant's] room." These statements show she did not merely acquiesce in an assertion of authority, but knew she could refuse to consent to the officers' request. Similarly, her explanation that she signed the consent form so the police could search for the gun clearly reveals her understanding that the police could not search for the gun without her permission. Her claim that she thought "the paper" was a warrant carried little weight in light of her testimony that she did not know what a warrant was.

Accordingly, substantial evidence showed Maria R.'s consent was a product of her free will, rather than a mere submission to an assertion of authority. The trial court properly denied appellant's suppression motion.

Appellant further contends the trial court erred in overruling his relevance and speculation objections to the court's question to Maria R. whether she would want the police to enter her home if her son had a gun in his room. Maria R. replied she did not know appellant had a gun in his room, but on further questioning she agreed that if she knew her son had a gun, she would want it removed. Assuming, for the sake of argument, that the court erred in overruling appellant's objections, the error was nonetheless harmless. Given the strong evidence of voluntary consent, there is no reasonable probability the court would have granted appellant's suppression motion absent Maria R.'s testimony in response to the court's question. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

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BOLAND, J.

We concur:

COOPER, P.J.

RUBIN, J.